

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 99-477

November 2, 1999

CMP NATURAL GAS, L.L.C.,
Petition for Approval to Furnish
Gas Service in the Municipalities
Of Westbrook and Gorham (§ 2105)

EXAMINER'S REPORT

NOTE: This Report contains the recommendations of the Hearing Examiner and Advisory Staff. Although it is written in the form of a Commission Order it does not represent the Commission's decision on any matter discussed herein. Parties may file exceptions on this report by November 8, 1999. The Examiner will issue a supplemental report on affiliated dealings issues on November 12, 1999. Oral Exceptions are scheduled for 1:00 p.m. and Deliberations for 2:30 p.m. on November 15, 1999.

I. SUMMARY

We authorize CMP Natural Gas (CMP NG) to provide service to Calpine Corporation and to unserved areas of Gorham and Westbrook, subject to the conditions outlined herein. We do not find a basis in the record to deny CMP NG authority to serve for inappropriate affiliate dealings. We will conduct a complete review of the affiliate transaction between Central Maine Power Company (CMP) and CMP NG for use of CMP corridors in Docket No. 99-739.

II. PROCEDURAL HISTORY

On July 8, 1999, CMP Natural Gas, LLC, filed a notice of its intent to file its application for authority to provide natural gas distribution service in the Towns of Westbrook and Gorham and requested that the Commission issue a protective order to cover confidential information to be included in the filing. The Hearing Examiner issued a Temporary Protective Order on July 15, 1999, protecting financial analyses concerning costs, revenues and earnings; engineering studies and plans; market research and customer information; and special contract terms.

On July 16, 1999, CMP NG submitted its application, filed pursuant to 35-A M.R.S.A. §§ 2102 and 2104, including the Prefiled Testimony of Tim D. Kelley, President and CEO and a 4-page cover letter providing a legal analysis supporting its approval. CMP NG requested expedited consideration of its application and decision by October 1, 1999, to allow it to begin construction prior to the onset of winter.

On August 2, 1999, the Hearing Examiner issued a Notice of Proceeding and Procedural Order with Proposed Schedule that would allow the case to be deliberated on October 4, 1999. The deadline for intervention was August 18, 1999 and an initial case conference was held August 19, 1999.

At the conference, the Hearing Examiner granted the interventions of the Office of the Public Advocate (OPA), Northern Utilities, Inc. (Northern), Maritimes & Northeast Pipeline, LLC (MNE), and granted Bangor Gas Company LLP (Bangor Gas) limited intervention for purposes of submitting a brief.

The Hearing Examiner discussed with the parties the issues that were presented by CMP NG's filing and solicited input on whether they could be adequately addressed on the proposed schedule. Northern objected to the Examiner's proposed schedule on the basis that it would not provide them or the Commission with adequate time to review the issues raised in the case. The Examiner agreed and asked the parties to present a joint proposed schedule to allow resolution of the case in early to mid December 1999.

On August 19, 1999, CMP NG filed a joint revised procedural schedule with Northern and OPA, but stated that it did so under protest, in order to avoid any delay in resolution of the case that might occur if a schedule were not in place. The Hearing Examiner adopted the proposed schedule on August 19, 1999.

On August 23, 1999, CMP NG petitioned the Commission for rehearing and reconsideration of both the Hearing Examiner's ruling on scope at the initial case conference and on the Examiner's revised schedule extending beyond October 1, 1999. In particular, CMP NG argued that issues involving dealings between affiliates CMP and CMP NG for use of CMP's transmission corridors were not relevant to this case and should be excluded. CMP NG also objected to extending resolution of the case beyond October 1, 1999.

The Commission held a hearing on CMP NG's request for reconsideration on September 7, 1999 to explore the question of what harm would ensue if the procedural schedule were extended beyond October 1, 1999, and held deliberations immediately thereafter.

On September 9, 1999 the Commission issued its Order on Reconsideration of Schedule and Scope requiring the Hearing Examiner to develop a schedule to resolve the proceeding by November 1, 1999 or shortly thereafter, finding this time frame consistent with CMP NG's construction schedule and that it would also accommodate the issues raised in this proceeding. The Examiner issued a revised schedule on September 10, 1999 and on the same date granted CMP NG's motion to compel Northern to respond to discovery prior to submitting its prefiled testimony. The Examiner requested that CMP NG advise the Commission in the event it no longer required resolution by November 1, 1999 to begin construction (due to slippage in construction schedule).

The revised schedule set a technical conference for October 5, 1999 to allow for discovery on both CMP NG and Northern's direct testimonies. CMP NG requested that this be changed to accommodate Mr. Kelley who would be in Chicago on that date. Northern objected to CMP NG's request. Because of schedule conflicts and constraints of each party's witnesses, the Hearing Examiner scheduled three technical conferences: October 1st for questions to Mr. Kelley; October 5, 1999 for questions to Messrs. Cote and DaFonte; and October 6, 1999 for additional questions of Mr. Kelley. The Hearing Examiner entered the transcripts of all technical conferences into the record of this case.

On September 15, 1999, the Hearing Examiner issued Temporary Protective Order No. 2 affording confidential treatment to information provided by Northern in this proceeding fitting the same categories of information for which CMP NG was afforded protection under the July 15, 1999 Temporary Protective Order.

On September 16, 1999, Northern filed a request pursuant to 35-A M.R.S.A. § 1311-A (1)(D) to have released to its attorneys copies of confidential information provided by CMP NG in this proceeding. On October 6, 1999, the Hearing Examiner issued a procedural order requesting parties to comment on Northern's request. CMP NG and Northern filed comments in response to the procedural order on October 7, 1999.

Northern filed the prefiled direct testimony of Danny G. Cote, and Francisco DaFonte, on September 17, 1999. Northern later provided re-redacted testimonies for its witnesses on October 4, 1999 and further revised redactions on October 18, 1999 in response to an October 14, 1999 procedural order directing the parties to revise redactions consistent with the release of now non-confidential material. CMP NG filed its further re-redacted direct testimony of Mr. Kelley at the direction of the Hearing Examiner on October 22, 1999.

By September 13, 1999 Procedural Order, parties were requested to file comments by September 28, 1999 on service area policy issues. Northern, CMP NG, and OPA filed responsive comments.

The Examiner required the parties to file a preliminary list of Uncontested Facts on September 17, 1999 and a Final List of Uncontested Facts on October 8, 1999. The parties filed a stipulation of facts on October 8, 1999 executed by OPA, Northern, and CMP NG. See Appendix A.

On October 12, 1999, the Hearing Examiner issued an Order Denying Northern Utilities, Inc.'s Request to Release Confidential Information to Counsel Pursuant to 35-A M.R.S.A. § 1311-A (1)(D). The Examiner allowed release of certain limited information regarding CMP NG's dealings with CMP for use of the electric transmission corridors.

The Commission held a hearing on October 13, 1999. At the hearing, Northern made an oral appeal to the Commission of the Examiner's October 12, 1999 Order pursuant to § 1311-A (2). The Bench conducted a further hearing on Northern's motion. At the conclusion of the hearing, it appeared that Northern's § 1311-A appeal was largely resolved because Northern was no longer seeking access to certain information that would

subject the attorney to limitations on future representation of Northern.

In response to the Examiner's October 12, 1999 order, CMP NG was directed to provide certain information to Northern. CMP NG provided this information on October 14, 1999. CMP NG also provided copies of its newly executed agreements with CMP for transfer of property rights and use of the electric affiliates' corridors for CMP NG's proposed pipeline to serve Calpine facility in Westbrook.

On October 18, 1999, Northern filed a Motion to Suspend or Modify Procedural Schedule and its Fourth Set of Data Requests to CMP NG on the newly released information. On that same day, the Hearing Examiner issued a Procedural Order seeking comment on Northern's motion and, in particular, what hardship would occur if the schedule were extended for two weeks to allow further review of the newly provided information. CMP NG and Northern filed responsive comments on October 19, 1999. CMP NG opposed the extension because in its view further process was not warranted. On October 20, 1999, the OPA requested a 2-day extension of the briefing deadline.

On October 22, 1999, the Hearing Examiner issued a Procedural Order Extending Briefing and Case Schedule to allow further time to explore the newly released information and set the date for resolution of all matters in the case for November 15, 1999, finding this to be generally consistent with CMP NG's construction schedule.

On October 22, 1999, CMP NG and CMP made a joint filing to the Commission of their proposed property rights transfer and use agreements, seeking approval of the affiliated interest transactions pursuant to 35-A M.R.S.A. § 707. A Notice of Proceeding was issued October 28, 1999 to parties in this, and related, dockets.

On October 26, 1999, the Advisory Staff issued a procedural order outlining a proposed settlement and setting a telephone settlement conference for discussion thereof. The Examiner held a brief unrecorded settlement conference in which Northern, Bangor Gas, and MNE participated by telephone. Northern objected to proceeding with substantive settlement discussions in the presence of the Advisory Staff. Consequently, the Advisory Staff left the conference allowing the parties to discuss potential settlement and very shortly thereafter, the OPA reported to the Hearing Examiner that there was no settlement among the parties.

On October 25, 1999, the Hearing Examiner issued a revised case schedule. Also on that date, CMP NG appealed the Hearing Examiner's October 20 procedural order and extended case schedule to the Commission. The Commission deliberated the matter at a special deliberative session on October 28, 1999 and issued its Order

Denying CMP Natural Gas's Request to Overrule Procedural Order on October 29, 1999.

On October 28, 1999, Northern filed a Motion to Compel seeking to receive redacted versions of communications between CMP NG, E/PRO, and CMP concerning the right-of way and draft right-of-way agreements.

Also on October 28, 1999, Northern and OPA filed letters indicating that they could not prepare adequately for a further hearing (set for November 1, 1999) on newly released information until they received outstanding data responses from CMP NG. The Hearing Examiner held a case management conference by telephone¹ on October 29, 1999 to discuss the need for further hearing and revisions to the schedule. The Hearing Examiner also discussed with the parties information at issue in Northern's October 28th Motion to Compel.

On October 29, 1999 the Hearing Examiner issued a Procedural Order summarizing the discovery rulings and schedule changes made during the conference.

On November 1, 1999, Northern filed a letter dated October 29th reasserting and further delineating the bases for its October 28th Motion to Compel and, alternatively, seeking an appeal of the Hearing Examiner's October 12, 1999 ruling that CMP NG should not provide this information to Northern's counsel pursuant to § 1311-A (1)(D). On November 1, 1999, CMP NG filed its response to Northern's motion.

CMP NG provided final responses to data requests on newly released information on November 2, 1999. Parties were required to indicate by 3:00 p.m. on November 2, 1999 whether they would request a further hearing on newly released information.

On November 2, 1999, the Hearing Examiner issued an Examiner's Report on all issues except developments involving newly released information. Exceptions to the report are due Monday, November 8, 1999.

A supplemental report is scheduled issue November 12, 1999. Oral exceptions are scheduled for November 15, 1999 at 1:00 p.m. with deliberations immediately following.

EXAMINER'S NOTE: This Procedural History will be revised as necessary in the Supplemental Examiner's Report to be issued November 12, 1999.

¹ The telephone conference was unrecorded because the Commission had no available court reporter.

III. CONTENTS OF RECORD

The record in this proceeding includes all technical conference and hearing transcripts, pre-filed testimonies, exhibits proposed by parties for admittance into record except those disallowed by Examiner (Adelberg letter, Calpine Eastern Corporation letter, City of Westbrook letter) by Evidentiary Ruling dated October 12, 1999.

In our September 9, 1999 Order on Reconsideration of Schedule and Scope, we directed the Hearing Examiner to require the parties to file a list of stipulated facts to facilitate the smooth and efficient processing of this matter. The parties submitted a list of uncontested facts October 8, 1999. The list is attached hereto as Appendix A.

Examiner's Note: The record remains open for issues related to information filed or released to non-confidential parties after the October 13th hearing, primarily related to right-of-way agreements and affiliate dealings.

IV. LEGAL STANDARDS

A. Statutory Provisions

This proceeding is governed by Chapter 21 of the Maine Revised Statutes Annotated, entitled "Organization, Powers, Service Territory." The particular provisions that are applicable are found in 35-A M.R.S.A. §§ 2102, 2104, and 2105. Section 2102(1) establishes that no public utility may furnish [natural gas distribution service]...in or to any municipality in or to which another public utility is furnishing or is authorized to furnish a similar service without approval of the commission.

Section 2104 also provides that a gas utility requires Commission approval to furnish its service in or to any municipality in the state, even if no other utility is furnishing or is authorized to furnish similar service.

Section 2105(1) states the standard by which the Commission must determine whether to authorize a second utility to provide service in or to a municipality:

no [natural gas distribution] franchise may be granted to any person to operate, manage or control a public utility ... in a municipality where there is in operation a public utility engaged in similar service or authorized to provide similar service, until the commission has made a declaration, after public hearing of all parties interested, that public convenience and necessity require a 2nd public utility.

Thus, we must determine whether the public convenience and necessity require that we authorize CMP NG to serve the Calpine facility and Westbrook and Gorham generally.

Both § 2104 and § 2105 require us to determine that the proposed service will be provided in a safe and adequate manner at rates that are just and reasonable. 35-A M.R.S.A. § 101. See also *Mid-Maine Gas Utilities, Inc.*, Docket No. 96-465, Order (Mar. 7, 1997) at 6-7 (*Mid-Maine*).

B. Case Precedent

The Law Court established in *Standish Telephone Company v. PUC*, 499 A.2d 458 (Oct. 11, 1985) (*Standish*) that a public need for a particular type of service exists when that particular service is not being provided. *Standish* at 462. See also *Mid-Maine* at 8. *Standish* also set out a 3-part test to evaluate whether an application to provide service is in the public interest and should be approved. The test requires a showing 1) of the existence of a public need for the service, 2) that the applicant has the technical ability to provide the service, and 3) that the applicant possesses adequate financial resources to complete the project. *Standish* at 459.

When these criteria are satisfied, we have determined that multiple utilities may be authorized to serve in an unserved area. See *Central Maine Power Company, Petition for Approval to Furnish Gas Service In and To Areas Not Currently Receiving Natural Gas*, Docket No. 96-786, Order (Aug. 17, 1998) (*CMP I*) at 4-7 and *Bangor Gas Company L.L.C.*, Docket No. 97-795, Order Denying Public Advocate's Motion for Comparative Proceeding (June 2, 1998).

In *CMP I*, we determined that competition for gas customers is likely to assist in the expansion of gas to unserved areas and, therefore, serves the public interest. See Aug. 17, 1998 Order at 5. To date, since the introduction of this policy in 1997, we have authorized overlapping, competitive service authority in approximately 35 municipalities. We determined in *Mid-Maine* that absent compelling evidence of harm we would approve competition among LDCs for customers. *Mid-Maine* at 19.

To date, however, our competitive franchise policy has not been tested in circumstances where an incumbent utility is already actively providing service. Thus, this case presents a closer question of whether the public convenience and necessity require a second utility to serve a municipality in which a utility is already serving and, if so, whether any regulatory delineation of service areas within the municipality are warranted.

There is also Commission precedent on when an additional utility may be authorized. In *Standish*, the Law Court also held that need is established if the service offered by the second utility is being provided by the incumbent but inadequately so. In *Standish*, a second utility applied to provide a lower priced, less convenient long distance service in the area in which Standish Telephone Company was serving. The Court noted that comparable service at a lower cost would necessarily be in the public interest. *Standish* at 463. Finally, the Court confirmed that an existing public utility need

not be afforded an opportunity to remedy the service deficiencies before a new utility may be authorized to provide the same service. *Standish* at 462, citing *In re LeFebvre*, 343 A.2d 204 (Me. 1975).

The Law Court did find that the Commission is required to consider the impact of authorizing a second utility on the existing utility, and the likelihood that doing so would create a wasteful duplication of facilities. *Standish* at 463-364 (characterizing wasteful duplication of expensive capital facilities as a "major concern" and finding the Commission had proceeded with care "to avoid undue detriment" to the existing utility.)

Consequently, we will explore the impact on Northern of allowing CMP NG to serve in the municipalities of Westbrook and Gorham as proposed and whether it would create or invite a wasteful duplication of utility facilities in those areas.

V. BACKGROUND: DESCRIPTION OF PROPOSED AND EXISTING NATURAL GAS SERVICE IN WESTBROOK AND GORHAM

In 1969, the Commission authorized Northern to provide service in or to nearly all cities or towns in the state, including Westbrook and Gorham. See *Northern Utilities, Inc., Re: Petition for Consent to Furnish Natural Gas Service in and to any City or Town of the State of Maine*, U. #2782 (June 27, 1969). Northern has provided service in Westbrook for 30 years. Northern currently has approximately 33 miles of distribution mains covering approximately 40% of the roads and streets in Westbrook and serves essentially all of the most densely portions of the municipality. Tr. G-85 (Simpson). Much of the remainder of the municipality is rural and of low population density.

Northern serves approximately 17 customers just over the municipal boundary in Gorham. The remainder of Gorham is unserved, though Northern has studied the possibility of providing service there over the years. See Northern Response to CMP-01-04. Northern's present distribution system in these municipalities provides service consistent with the current load and pressure requirements.

In *CMP I*, we granted CMP NG -- a joint venture between CMP and New York State Gas and Electric (NYSEG) -- conditional authority to serve in 60 municipalities in Maine and full authority to serve in 35 municipalities grouped into six distinct system areas: Windham/Standish, Augusta, Waterville, Bethel, Bangor, and Bath/Brunswick Coastal areas. In granting conditional authority, we found that CMP NG possessed adequate financial and technical ability to provide service as a natural gas distribution utility in Maine.

By granting full authority, we allow an LDC to construct and operate a natural gas utility. Westbrook or Gorham were not among the municipalities considered in *CMP I*. We approved general service tariffs for CMP NG in early 1999. CMP NG currently provides service to several customers in the Windham area and is continuing its expansion there. Tr. C-62 (Kelley).

CMP NG proposes to provide natural gas service under its current tariffs in Westbrook and Gorham. Those tariffs incorporate rate schedules consistent with the rate plan approved in *CMP I*. Those tariffs allow CMP NG to enter into special contracts without prior Commission approval, subject to shareholder risk.

CMP NG's request to serve in Westbrook and Gorham derives from a special contract it has entered into with the Calpine Corporation (Calpine) for construction, operation and maintenance of a high pressure lateral pipeline to serve Calpine's gas-fired power plant located in Westbrook and scheduled to enter commercial operation in early 2001. CMP NG has contracted to provide gas to Calpine during the summer of 2000. The pipeline will traverse Gorham and connect with the Portland Natural Gas Transmission System and Maritimes & Northeast Pipeline joint facilities interstate natural gas transmission pipeline. Consequently, CMP NG requests authority to serve generally in the municipalities of Gorham and Westbrook but has not developed specific plans to serve any customer other than Calpine at this time. Tr. C-23 (Kelley).

VI. ANALYSIS

CMP NG's financial and technical capacity to serve has been stipulated by the parties and has been established by prior Commission orders. See Appendix A: Stipulation of Facts and *CMP I* Aug. 17, 1998 Order. This satisfies two of the three prongs of the *Mid-Maine* test noted above. Thus, we must determine whether there is a need for the service that CMP NG proposes to provide in these municipalities. Because of the distinct types of service Calpine proposes to provide as well as the different degrees of service currently being provided by Northern in the municipalities, we will separately analyze CMP NG's proposal to serve Calpine, Gorham, and Westbrook. See *Standish*.

In the *Mid Maine* and *CMP I* cases, we found that we should authorize more than one utility to provide service in municipalities where LDC service was not currently being provided, absent compelling evidence that certificating a second utility would not serve the public interest. This case raises the further question: Where an existing utility is actively providing service in a municipality, how should we take this into account in determining whether to award authority to serve to a second utility? We will address this question in the course of determining the extent to which CMP NG will be allowed to serve in Westbrook and Gorham.

We will first discuss the question of authorizing CMP NG to provide service to Calpine, and then will turn to the issue of serving other customers in the area.

A. Service to the Calpine Corporation Facility in Westbrook

1. Positions of the Parties

CMP NG argues that it should be allowed to serve Calpine because: 1) this is a type of high volume/high pressure service which Northern does not currently provide, 2) Calpine had at least six other options for obtaining service but decided that an agreement with CMP NG best met its needs, and 3) if CMP NG is not authorized to serve

Calpine there is no reason to believe that Calpine would chose to select Northern rather than one of its other alternatives.

The OPA also urges that we allow CMP NG to serve Calpine, noting that Northern could not use its existing infrastructure to serve the plant but would, instead, have to construct a lateral similar to the one that CMP NG is proposing to construct.

Northern argues that CMP NG should not be allowed to serve Calpine because Northern would be able to negotiate a contract with Calpine under terms which are at least as favorable to Calpine as the terms of their contract with CMP NG and because a single contract is not evidence that the public requires a second utility. Northern also argues that allowing CMP NG to serve a major customer in a municipality in which it is already serving unfairly infringes on existing customers by eliminating the opportunity to spread service costs over greater load.

Bangor Gas also opposes allowing CMP NG to serve Calpine because "in fairness it may be more appropriate to apply a more traditional concept of regulatory certification" in this case since the policy has not been extended to areas in which service is actively being provided.

2. Type of Service Not Currently Provided

The *Standish* decision establishes that a determination of need may be satisfied when there is an existing service provider if the type of service offered by the second utility is of a different type, price, or quality from that offered by the incumbent.

Clearly, service to the Calpine facility is a type not currently provided in Westbrook, nor is Northern equipped to provide such service with its existing facilities. Calpine is a new customer who will be taking service for the first time from a new facility. Any service provider would need to construct and operate the same, or substantially the same, facilities as CMP NG proposes to construct to serve Calpine. Allowing CMP NG to provide service to Calpine would not result in a wasteful duplication of facilities because Northern would need to build substantially the same facilities.

As noted above, the Court ruled in *Standish* that the Commission need not allow the existing utility an opportunity to provide the proposed service before authorizing a second utility. Moreover, the evidence makes clear that Northern had at least an opportunity to submit a proposal to provide service to Calpine but chose not to do so, its management opting instead to put forth a proposal on behalf of its affiliate, Granite State Gas Transmission, Inc. (Granite). Granite is an interstate gas pipeline utility that is regulated by the Federal Energy Regulatory Commission (FERC). Mr. DaFonte, representing both Northern and its affiliate, Granite, met with Calpine on April 4, 1999 to discuss the possibility of providing service to Calpine. As a result of that meeting, Mr. DaFonte developed and sent to Calpine a proposal to have Granite, not Northern, build the lateral and associated metering and regulation facilities to provide service to Calpine.

This fact forecloses any possible argument that we should deny CMP

NG's request for authority to serve Calpine on the basis that Northern is the rightful provider.

3. Competitive Choice

Northern appears to suggest we should, in effect, select the natural gas provider for Calpine. Northern expresses concern that: 1) Calpine did not use a competitive process or issue a Request for Proposals (RFP); 2) failed to provide Northern with project information which it needed to prepare a detailed bid; and 3) ignored certain benefits which Northern or Granite might have been able to provide such as expanded access to upstream gas supplies. In essence, Northern is arguing that Calpine failed to act in its own best interest and that, if it had, it would have chosen to take service from Northern or Granite and not from CMP NG.

Service to large customers, such as Calpine, could be provided by the following entities: 1) a PUC-regulated LDC, 2) a FERC-regulated interstate pipeline, or 3) the customer itself through facilities it constructs and operates. Given this wide range of choices, Calpine is the entity best positioned to determine its energy supplier. Certainly, we do not have the authority over how Calpine makes its energy supply choices (e.g. by RFP or otherwise.) If CMP NG were denied authority to serve, there would be no assurance that Calpine would choose Northern over one of its other alternatives.

As the operator of a 540 MW generation facility, Calpine will be buying huge quantities of gas each year, spending several tens of millions of dollars on fuel for its plant. While Northern's instincts may be correct, we have every reason to expect that Calpine will be vigilant in protecting its interests and presume that it is better equipped than this Commission to assert its own interests in negotiating or contracting for gas supply and delivery. Even if Northern could provide us with evidence that service by Northern was clearly in Calpine's best interest, we could not force Calpine to take service from Northern. Our function is to determine public interest matters involving utilities, not to second guess the business decisions of unregulated business concerns such as Calpine.

In addition, as discussed further below, allowing CMP NG to serve Calpine will not result in a significant harm, and is not unfair, to Northern. This fact is underscored by Northern's own actions. When Mr. DaFonte decided to submit a proposal that Granite, rather than Northern, serve Calpine, he was not required to consider whether Northern might be harmed as a result. Tr. G-146-149. Indeed, Northern's management testified that shareholders would be indifferent as to which affiliate -- Northern or Granite -- would serve Calpine. Tr. G-179. Its own representatives' lack of concern and decision to forego submitting a proposal to serve Calpine on Northern's behalf suggests that any potential harm to Northern in having another entity serve Calpine is insignificant or was waived.

B. Service to Gorham and Westbrook Generally

1. Positions of the Parties

CMP NG argues that we should grant its petition because it is consistent with our prior policies, because customers generally benefit from competition, and because any harm to Northern is speculative at best.

Northern argues that the petition should be denied because CMP NG failed to demonstrate that a second utility is required in Gorham or Westbrook and because our prior policies are flawed.

The Public Advocate states that we should allow CMP NG to serve in Gorham but not Westbrook because Northern serves only a few customers in Gorham but serves a substantial portion of Westbrook and could expand service there relatively easily.

Bangor Gas urges us to not allow CMP NG to serve in either town because "fairness suggests that this Commission should first articulate its policy regarding future application of its pro market approach in municipalities that, as of the *Mid Maine* decision, were being served by the a franchised utility."

2. Need for Second Utility

The record states that Northern currently serves approximately 1,383 customers in Westbrook and approximately 17 in Gorham. There is no suggestion that Northern's service to these customers is somehow inadequate nor is there any suggestion that these customers require a second utility or a different type of service. However, there are a significant number of potential customers in both towns, particularly Gorham, who are currently not being served.²

In *Mid Maine* we found that an applicant seeking to serve an area, which is currently unserved, need make no further evidentiary showing in order to demonstrate that need for the proposed service exists (*Mid Maine* at 10). In *CMP I*, we found that the public interest was best served by allowing more than one LDC to serve municipalities where no LDC was currently providing service or, in the cases of Falmouth and Cumberland, where there only a few customers were being served.

a. Existing Customers

A "need" for a second utility to serve existing customers has not been demonstrated. Those customers are already receiving service of the same general type and quality that CMP NG proposes to offer. Nor is CMP NG seeking to serve Northern's existing customers. In fact, Mr. Kelley, CMP NG's President and CEO, stated

²While Northern and CMP NG have somewhat different approaches to measuring penetration rates, clearly there are a number of potential customers not currently taking gas service in Westbrook and Gorham. Confidential information provided by each indicates that there is potential for expansions to serve new customers in the municipalities.

I really have no interest in serving customers who already have service from another provider. I don't see that as a good business philosophy to see customers switching back and forth between gas companies, electric companies, whatever. So, it would not be my intention to serve or physically bypass any of Northern's existing customers.

Tr. C-48.

Mr. Kelley's views generally confirm that allowing a second utility to takeover service to existing customers of another utility would comprise wasteful duplication of facilities and, therefore, is likely to be unwise public policy. If CMP NG or some other entity were to install gas mains and services to customers who were already served by similar Northern facilities, there would clearly be physically duplicative services.

Further, allowing CMP NG to serve Northern's existing customers could result in harm to Northern. When considering new investments to expand or upgrade its system, Northern compares the cost of the expansion or upgrade to the net revenues it will receive from the customers who will be served by that upgrade, including new customers who might become available over the first 2 to 5 years after the upgrade. Tr. D 56-59. By using this rule, Northern has testified that it is made whole for its investments so long as the customers do not leave Northern to take service from another LDC during the 35-year time period in which it recovers its investment in infrastructure. *Id.* Thus, if we were to allow these customers to leave at any time, Northern could lose the opportunity to recover these investments in its system.

For these reasons, we cannot find that CMP NG should be authorized to serve current or future customers of Northern in Westbrook or Gorham.

3. Impact on Existing Utility

As noted, to the extent that there are customers not currently receiving natural gas service within a municipality no further demonstration of need is required.³ At the same time, where another utility is currently providing service in the municipality, we must consider the impact of extending this policy on the incumbent, as required by *Standish*, and on the existing customers of the incumbent. Not surprisingly, this was one of the principal issues raised by Northern in this case.

The core of Northern's argument is that local gas delivery service is a natural monopoly, and therefore it is less expensive to have all customers in Westbrook and Gorham served by a single monopoly franchised provider. We could hold an extensive proceeding in an effort to determine whether this assertion is factually correct, but, in fact, that effort is not necessary here. If Northern's assertion here is correct, either for the entire area of the two municipalities or for some portion of that area, then Northern would be in a dominant competitive position. Accepting, *arguendo*, Northern's argument, then it would have a cost advantage over CMP NG because expansions of the existing system are less expensive than the cost of constructing a new and separate system. Placing Northern in a position where it has the dual advantages of incumbency and lower costs over its rival does not place them in significant jeopardy nor cause them harm, particularly when weighed against the benefit to customers of having a choice of companies to provide service.

At the hearing and in technical conferences, Northern testified that even if it had the advantage of lower cost, it might still be harmed if CMP NG were allowed to "cherry pick" its most profitable new customers, that is CMP NG might choose to pursue only Northern's most profitable customers. This could occur if the incremental cost of serving certain new customers was low while the rates those customers would pay under Northern's existing tariffs were relatively high.⁴ If CMP NG's costs were above Northern's costs but below Northern's tariff, the concern is that CMP NG would be able to offer a lower price than Northern, even though Northern's costs were below those of CMP NG.

If this situation were to occur, it would be clear evidence of a problem

³ Northern argues that permitting CMP NG to serve in this case would arbitrarily treat gas companies differently than electric companies under the same statutes. However, we considered this and other aspects of this policy decision in our prior orders. See *CMP I*, Order (Aug. 17, 1998) at 4-7.

⁴ We recently concluded a comprehensive investigation into Northern's rate design and approved a number of rate design changes to take effect on November 1, 1999. See *Northern Utilities, Inc., Request for Approval of Rate Design and Partial Unbundling Proposal*, Docket No. 97-393, Part One Order Approving Stipulation (Sept. 3, 1999). The new rates reduce the charges for large, high load factor customers. The effect of this new rate design is to reduce any "cherry picking" problem that might have existed.

with Northern's rate design. It would mean that Northern's tariff was charging the new customer a rate that exceeded the stand alone cost of serving that customer. In such a case, it would be sensible to offer the customer a discount to avoid charging more than the stand alone cost of service.

On the other hand, if Northern's assertion is not correct and it's incremental cost of serving new customers is higher than CMP NG's incremental costs, this would suggest 1) that it would be less expensive, and therefore in the public interest to have CMP NG provide the service and 2) that provision of service was not, in fact, a natural monopoly. In such a situation it would clearly be desirable to allow a second LDC such as CMP NG to compete for customers and serve those where its costs were lower.

In addition, the evidence shows that Northern would not, in fact, be harmed if CMP NG were able to serve new customers in Gorham and Westbrook. In our earlier discussion of service to existing customers, we determined that under Northern's own investment criteria, it explained that it would be made whole so long as CMP NG did not capture customers who were already taking service from Northern or who could reasonably be expected to take service from new system-expansions in the first few years after the investment was made. We have already discussed the desirability of limiting our authorization here to new customers. In addition, as we will discuss further below, we expect that the market will evolve so that *de facto* service territories will evolve. As a result, once one LDC, such as Northern, extends its mains into a neighborhood, it will serve the entire neighborhood since its costs for serving additional customers from its system will be lower than the costs a new entrant will incur. One effect will be that once Northern has invested in an extension of its system to a neighborhood, it will likely obtain all the customers interested in taking gas service in that area. As a result, we conclude that Northern will be made whole for its past and future investments to expand its system.

Northern also raises a concern that allowing multiple providers to serve an area could create confusion for customers and safety problems. It suggests that gas customers might call the wrong utility to investigate leaks or other problems. CMP NG testified that similar confusion exists even when there is one gas company in an area, noting that the gas company occasionally even receives service calls from residents who do not even take gas service. Tr. G-56-57 (Kelley).

We recognize that there may be some additional complexity for sorting out which gas company owns the plant or serves the customer in question if the two companies serve areas proximate to one another. However, we do not believe that this presents a significant safety concern or cannot be accommodated by a cooperative arrangement between both providers. For instance, in such a circumstance the first gas company to respond could assist in making the situation safe until the proper entity arrives; arrangements can also be made to compensate the LDC in this circumstance.

Northern also argues that its ability to provide stable rates to its existing customers would be detrimentally affected if growth opportunities within a municipality were limited. For the reasons we have already discussed, we find this argument unpersuasive. Northern agrees to serve new customers when the profit it will

earn from those customers exceeds its hurdle rate that is presumably at least equal to its allowed rate of return over a 35-year horizon. So long as new customers provide at least the allowed rate of return, then adding customers still prolongs the date at which it would need to seek higher rates (or accelerates the date at which the rates should be reduced). The only sense in which Northern would be harmed here is if, but for competition, it was able to secure new customers at rates which would otherwise be higher than a new entrants' stand alone cost of serving the customer (or a group of customers within the neighborhood).⁵ The effect of increased rates, then, would be to reduce or eliminate a subsidy that the existing customers would otherwise benefit from. This is not "harm" to these customers, at least in the sense that it is an outcome that treats them unfairly.

Finally, Northern argues that the policy we adopted in *CMP I* will lead to fewer customers being served within municipalities and, presumably, that we should change our policy. Northern's argument here is that in deciding whether to expand its system it calculates expected revenues from customers over 35 years. It is concerned that if CMP NG, or some other LDC, could take away these new customers in the interim then it would suffer a loss. As a result, Northern states that it would be less likely to extend its system in the first place. It goes on to state that a rational utility would respond by investing only in the smaller number of highly profitable main extension projects that have high return and quick payback or where customers are willing to make a long-term contractual commitment to remain with the utility

Northern's argument here ignores two protections that appear adequate to eliminate the problem. First, if a utility has extended its system to gain a new customer (or group of customers), its incremental costs of continuing to provide service to that customer are quite low, unlike a potential new provider who would typically need to make a significant investment to take the customer away. In other words, once it extended its system, the utility would have a substantial benefit of incumbency that would serve to reduce, though perhaps not eliminate, the chance that a second firm would move in. But more importantly, we will limit our service authorization to CMP NG and Northern to expanding their systems only to customers who are not already taking service from the other. This limitation will apply regardless of whether the customer is taking service from a utility today or begins taking service at some time in the future. Once a customer initially takes service from either firm, the customer will remain a customer of that firm.⁶ With this restriction, we believe that allowing two utilities to serve in Gorham and Westbrook will not

⁵ In order for either stockholders or other ratepayers to benefit by spreading service costs over additional sales volumes, those additional sales must be made at a price which exceeds the incremental costs of serving the new load, including a reasonable return (or profit).

⁶ We would not rule out making exceptions to this rule on a case-by-case basis after considering whether the existing utility would be made whole. For example, if a customer decided to dramatically increase his or her usage in a manner that would require a major upgrade, we might consider allowing a second utility to provide that service. In addition, if there were evidence that the existing utility's service was inadequate, we might waive this limitation.

result in fewer customers being served. Rather, as we indicated in *CMP I*, we believe that this policy will increase, not decrease, the number of customers who will be served.

In fact, we broaden this limitation in two ways. One possible problem is easily illustrated by an example. Suppose that a business that is taking gas service is sold to a new company that continues doing business at the same location and continues to buy gas. The fact that the business has been sold and that a new firm is now the customer should not entitle a second utility to take over that customer. Thus, we will expand the restriction on existing customers to include locations that are currently being served, even if the identity of the customer changes.

Our second restriction on the limitation goes to the concept of serving neighborhoods, which we discussed above. Either as a matter of policy or good business practice, two utilities should not have heavily overlapping service areas. For example, it is probably not desirable for one utility to serve the first, third, and fifth houses on a street while the other serves the second, fourth, and sixth houses. This is because of the duplicate service mains required and the fact that reduced customer density may result in higher unit costs paid by both utilities' customers. It may be similarly undesirable to have each utility serving every other street in a development.

One alternative would be for us to attempt today to divide, say, the town of Gorham into two pieces, one to be served by each LDC. We reject this alternative because there is no evidence in the record that might allow us to draw such boundaries and, more importantly, because drawing such boundaries would defeat the purpose of our policy. We expect that LDC's will expand based on their own business judgments as to their costs of expansion, the likely business which expansion might generate, and their willingness to accept the risk that such expansions might be less than fully successful.

CMP NG suggests that rough service area boundaries will tend to be established by market forces; we accept this premise. Nonetheless, we can not rule out the possibility that, in some cases, specific intra-municipality boundaries may turn out to be necessary to avoid destructive competition and/or wasteful duplication of facilities. However, rather than deny CMP NG's request on the chance that this problem could occur, we prefer to deal with such problems only after there is at least some evidence that the problem is real, as opposed to merely theoretical. We would consider drawing specific boundaries upon a clear demonstration that in a specific case, such a boundary would clearly be in the public interest. In the meantime, we will limit ourselves to advising the LDC's that we generally expect that *de facto* service areas will, in fact, emerge.

This issue of *de facto* service boundaries may emerge first in Westbrook, where Northern currently serves approximately 1,383 customers, principally in the central portion of the municipality. One resolution, suggested by the OPA in its brief, would be to simply exclude CMP NG from serving any customers in Westbrook, other than Calpine. Currently Northern's gas mains cover approximately 40% of the roads in town, and there are significant portions of the town where service is not currently being provided.

OPA's concern appears to be based on the suggestion that Northern's current infrastructure is adequate to provide service to the remainder of the municipality. If that is so, then allowing CMP NG to extend its system to serve unserved areas of Westbrook could result in Northern's facilities being less than fully utilized.

We find Northern's testimony to be equivocal on this point. Mr. Cote states that Northern expands its system incrementally to match current loads and responded that the system would not be noticeably underutilized if Northern does not expand throughout the remainder of Westbrook and Gorham. ADV-07-03. He also states that Northern's current system would support expansion of service into Gorham. Yet, there are several potential upgrades that would be necessary depending on what amount of new load developed on the system.

Beyond this question, which ultimately is a determination of fact, we see little reason to treat a potential customer in an unserved area of Westbrook any differently than an otherwise identical customer who happens to be just over the line in Gorham. We note, however, that to the extent that Northern already has an extensive distribution system in Westbrook with the capacity to provide service to additional customers at little or no incremental cost, it appears likely that Northern should be able to out-compete CMP NG in most, if not all, of the area.

4. Conclusion

In summary, we see no basis to modify our policy, enunciated first in *Mid Maine*, to allow two or more LDC's to compete in serving customers who do not currently have gas service. There is no compelling basis on this record to modify this position for municipalities such as Gorham and Westbrook where there are significant portions of the town where service is not currently being provided.

C. Engineering Plans

1. For Service to Calpine

When authorizing service authority, we review the project engineering plans to assist us in determining whether the utility proposal can reasonably be expected to provide safe and adequate service at just and reasonable rates. Many of the details of CMP NG's proposed service facilities for Calpine are confidential because they would reveal competitively sensitive customer-specific information or utility cost or profit information. This information, therefore, has only been provided to the Commission and its staff and the OPA and its staff.

Our review of CMP NG's plans for service to Calpine reveals a credible facilities design and construction plan. There has been little or no controversy over CMP NG's proposed facilities.⁷ Accordingly, we find that CMP NG's proposal to provide service to Calpine should result in safe and adequate service.

2. For Service to Westbrook and Gorham

CMP NG has no current engineering plans to serve other customers in Westbrook and Gorham but will develop them as customers request its service. In *CMP I*, we reviewed CMP NG's plans to provide service to the various municipalities in which it sought authority to serve. For some of the municipalities, CMP NG had a general outline of how it proposed to provide service. It represented that it would follow similar procedures and goals in all of the potential service areas. We found that CMP NG's general procedures and degree of capability as presented in that case are adequate to conclude that it will provide safe and adequate service in areas in which it endeavors to serve. Similarly, we extend that conclusion to future efforts to serve Westbrook and Gorham. This is consistent with the parties' stipulation that CMP NG possesses adequate technical capacity to provide natural gas service in Maine.

Finally, we note that CMP NG, as well as the other LDCs currently authorized to serve in Maine will provide periodic reports of system expansion for our review enabling us to keep apprised of their activities. Moreover, CMP NG and its contractors (along with all authorized LDCs) will be subject to our ongoing pipeline construction, operation and maintenance practices oversight and inspection for general distribution service construction in Gorham and Westbrook, in our role as state agent for the Federal Office of Pipeline Safety.

D. Just and Reasonable Rates

⁷ There has been much controversy in this proceeding over whether CMP NG's asserted construction schedule was valid. However, this controversy pertains solely to the issue of the time frame in which the MPUC proceeding would need to be conducted, and does not suggest any project infirmity.

The Staff and parties have explored the project economics of CMP NG's proposal to serve the Calpine facility. Initially, we recognized that there was some concern that this project could be too heavily discounted such that it could create a need to increase rates to other customers. If so, it would be necessary to assess CMP NG's actual cost for use of CMP's corridors. Because service to Calpine will be treated solely as a matter between those contracting parties and is subject to shareholders' exclusive risk, we find that concerns about the costs and revenues of CMP NG's proposal are largely not at issue or are sufficiently resolved. See ADV-01-04, ADV-01-06, and OPA-01-03.

In addition, because the project economics will not affect CMP NG's rates to its general service customers, there is no reason to reopen our previous finding that, under its approved rate schedules, CMP NG will provide service to municipalities in Maine at just and reasonable rates, including in Gorham and Westbrook.⁸ Finally, as noted in *CMP I*, the risk of uneconomic LDC expansion is on shareholders.

E. Authority to Serve On Less Than Whole Municipality Basis

Northern argues in this proceeding that the Commission cannot legally authorize a utility to serve portions of a municipality. Rather, Northern asserts, the statutes suggest that we only may authorize service area on a whole municipality basis. See Northern Brief at 34-37.

We disagree and have so stated in prior decisions. In particular, in *Contel of Maine, Inc., Proposed Maps to Provide for Boundary Changes Between Contel and Bryant Pond Telephone Company*, Docket No. 90-083 and *Bryant Pond Telephone Company, Proposed Boundary Changes Agreed Upon With Contel of Maine*, Docket No. 90-115 (consolidated), Order Approving Changes in Service Territory Pursuant to 35-A M.R.S.A. §§ 2102, 2105 and 1321 (Oct. 3, 1990), we explicitly found that the Commission could authorize service territory on less than a whole municipality basis. See Order at 2 and 8-9 (finding that the statutory language does not imply that authority to serve may only be granted for a whole municipality.) Northern argues that this decision does not resolve the question because it disagrees with the Commission's statutory interpretation.

In any event, it is not necessary for us to reach this issue because authorizing CMP NG to serve within the whole municipality subject to the conditions we have applied is sufficient to protect any public interest concerns. Consequently, this issue is of no import to our decision here.

F. Affiliated Interest Dealings

Early in this proceeding Northern raised the issue whether there have been any inappropriate dealings between CMP NG and its affiliate, CMP, for use of CMP's electric transmission corridors. In its brief, Northern focused on the assertion that CMP

⁸ Our approval of CMP NG's rate plan was based on the determination that shareholders, not ratepayers, will be at risk for uneconomic expansion.

NG was more confident than Northern about its ability to gain access to CMP's right of way and about the price it would need to pay to gain that access. Northern also suggested that one reason that Calpine may have decided to contract with CMP NG may have been that Calpine believed, for whatever reason, that CMP NG would be in a better position to obtain CMP's agreement to use the right of way.

MNE also focused much of its attention on access to the CMP right of way. MNE argues that a gas LDC should not enjoy favorable terms or conditions or competitively advantageous access to an electric utility affiliate's rights of way and asserts that CMP NG was able to reach an agreement with CMP more quickly and easily than non-affiliates such as MNE or PNGTS. In addition, both Northern and MNE argue that because the contract between CMP and CMP NG was not signed until October 12, 1999, the parties were at a disadvantage in being able to fully pursue this issue.

Affiliated transactions such as this are very important to this Commission for several reasons. First, if the price for the ROW is too low, CMP's ratepayers could be forced to pay too much for electricity. Second, if non-affiliates are excluded from access to and use of existing electric utility corridors, development of a competitive market for gas (or other services which might wish to use the ROW) will be inhibited, which is clearly not in the public interest. Finally, as it becomes more difficult to site new transmission (whether for electricity, natural gas, or telecommunications) there is a public interest in insuring that the existing corridors are used wisely. In other words, we agree with MNE that affiliates should not have preferential access, for several reasons.

It is unclear whether it was "easier" for CMP NG to reach an agreement with CMP than it might have been for another, non-affiliated party, or if it was, the reasons why. CMP NG's witness and President, Tim Kelley, testified that he employed a more reasonable approach than did MNE and PNGTS in their negotiations with CMP. In particular, Kelley suggested that CMP NG simply decided to agree to, rather than contest, CMP's terms, thereby smoothing negotiations. Tr. G-191, 193-4.

There may have been a difference in how readily CMP agreed to meet with each entity to even discuss the possibility of access to the corridors initially. The evidence shows that Northern made one telephone call to CMP and was asked to put a specific request in writing, which it chose not to do. By contrast, on the basis of the limited evidence we have on the precise course of negotiations, at a minimum CMP NG appears to have gained access to CMP personnel to discuss prior to having reduced the terms of its usage or project specifications to writing. Thus, there may have been a difference in CMP's reception to these entities in the initial stages of inquiry and negotiation.

Beyond that, the record reveals little more than that CMP NG appears to have gained some degree of assurance of access or, perhaps, simply gambled on access, as a result of its early meetings with CMP personnel. Nevertheless, because Northern did not pursue the matter with CMP further than an initial telephone inquiry, the record does not support a finding that it was unfairly denied access.⁹

⁹ There is no evidence at all regarding whether Calpine believed, or was led to

Had Northern actually submitted a proposal to serve Calpine or had it taken further steps to acquire access to CMP's corridors, Northern's allegations of unfair competitive dealings between the CMP Group affiliates would have more weight. As it stands, Northern's attempt to acquire access to the electric utility corridors began and ended with one preliminary telephone inquiry. Because Northern did not pursue obtaining access to the transmission corridor, their arguments here are reduced to speculation as regarding whether CMP would have treated Northern fairly if Northern had made further efforts to obtain access to the right of way. Moreover, any possible claim of right to provide service to Calpine on Northern's part ended with its decision not to submit a proposal to Calpine when it had the opportunity.

Because Northern's own actions resulted in, or substantially contributed to, it not serving Calpine and because it did not pursue access to CMP's corridors aggressively enough to demonstrate that it was making a serious effort to obtain such access, we do not find a basis to deny CMP NG authority to serve Calpine by reason of inappropriate affiliate dealings.

We allowed the parties to develop this issue in this case because, if competitive unfairness had occurred, it would be a serious problem that we would need to address in an effort to ensure that a level playing field exists to sponsor fair and vital competition among LDC's in Maine. We are now satisfied that there is no basis in the record for denying CMP NG authority to serve Calpine and the municipalities of Gorham and Westbrook.

There is, however, reason to continue to pursue the issue. When a utility such as CMP is approached by someone with an interest in using one of its Row's, it would seem that one its first steps should be to ascertain whether other parties might also be interested in using the same ROW, either for the same or a different purpose. We would expect that a prudent utility would seek out other potential users both to make certain that this was the "highest and best" use of the real estate and to encourage potential users to bid up the price. If, in fact, Northern received a cool reception, this suggests that a problem may, in fact, exist.

Of course, we recognize that CMP is not a party to this case and that it has not had an opportunity to describe the actions it has taken nor to defend its actions, if any defense is even necessary. We will take up these issues further in Docket No. 99-739, our review of CMP NG and CMP's joint application for approval of agreements governing the use of the corridors on which the pipeline to serve Calpine will be built. Based upon the outcome of that case, we will consider whether it is desirable to open a proceeding to consider the issues surrounding affiliate access to public utility corridors in a broader context.

believe, that CMP NG might have an easier time gaining access to the ROW. The argument that CMP NG was able to reach its agreement because Calpine believed that CMP NG was favored over others is speculative.

Examiner's Note: This recommendation may be modified, if warranted, in the Supplemental Examiner's Report to be issued November 12, 1999.

G. Northern Contests Release of Confidential Information by CMP Natural Gas

To be completed in Supplemental Examiner's Report.

H. Request for Sanctions

To be completed in Supplemental Examiner's Report.

VII. CONCLUSION

For the foregoing reasons, we authorize CMP Natural Gas LLC to provide service in the municipalities of Westbrook and Gorham, including service to the Calpine Corporation facility, subject to the conditions described herein and subject to the condition that CMP Natural Gas undertakes such service at its shareholders' risk.

Respectfully submitted,

Carol A. MacLennan
Hearing Examiner

With Advisory Staff:

Thomas Austin
Denis Bergeron
Gary Farmer
Lucretia Smith

APPENDIX A:

STATE OF MAINE
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 PUBLIC UTILITIES COMMISSION

October 7, 1999
 STATE OF
 October 7, 1999
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 STATE OF
 October 7, 1999

CMP NATURAL GAS, L.L.C.
 Petition for Approval to Furnish Gas
 Service in the Municipalities of Westbrook
 and Gorham

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Docket No. 99-477

Stipulation Agreement

This Stipulation Agreement (the "Stipulation") is entered into and effective as of October 7, 1999, by and between CMP Natural Gas, L.L.C. ("CMP Natural Gas"), Northern Utilities, Inc. ("Northern") and the Maine Office of the Public Advocate ("OPA"). CMP Natural Gas, Northern and OPA are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

A. General Purpose of Stipulation

The purpose of this Stipulation is to identify and describe specific facts or issues that are not contested by the Parties. The Parties agree not to contest any of the specific facts or issues set forth in this Stipulation during the course of this proceeding. However, the Parties recognize that the facts or issues to which they have agreed as of the effective date of the Stipulation are subject to change and that new facts or information may emerge in the future. Accordingly, a Party may, at its sole discretion, withdraw its agreement not to contest a specific fact or issue set forth in the Stipulation after providing written notice to

the other Parties. Such notice shall clearly identify the reason that the Party is withdrawing its agreement not to contest a fact or issue identified in the Stipulation, including a statement of any new facts or information which form a basis for the Party's decision.

B. No Precedent

The making of this Stipulation by the Parties shall not constitute precedent as to any matter of law or fact, nor, except as expressly provided otherwise herein, shall it foreclose any of the Parties from making any contention or exercising any right, including rights of appeal, in any other Maine Public Utilities Commission proceeding, or investigation, or any other trial or action.

C. Stipulated Facts and Issues

1. CMP Natural Gas possesses the technical capability and financial resources necessary to provide gas service in Westbrook and Gorham.
2. Northern possesses the technical capability and financial resources necessary to provide gas service in Westbrook and Gorham.
3. CMP Natural Gas has not signed contracts to serve any customers in Westbrook and Gorham other than the Calpine plant.
4. Under CMP Natural Gas's proposal, it is necessary to secure property rights from both Central Maine Power Company and other landowners in order to build a lateral pipeline to serve the Calpine plant.
5. CMP Natural Gas will not charge any customer other than Calpine for the costs of any facilities associated with the lateral pipeline facilities built to serve the Calpine plant.

6. CMP Natural Gas has not entered into any arrangements for financing the costs of building facilities to serve the Calpine plant.
7. Northern reported the following number of meters (active) in Westbrook and Gorham in its annual FERC Form 2-A for reporting years 1995-1998:

12/31/1998

Westbrook	1,383
Gorham	18

12/31/1997

Westbrook	1,333
Gorham	17

12/31/1996

Westbrook	1,310
Gorham	15

12/31/1995

Westbrook	1,246
Gorham	14

8. According to 1999 data from the City of Westbrook Tax Assessors Office, there are the following number and type of buildings in Westbrook:

321 Commercial and Industrial Businesses

4,161 Single Family/Condos

739 Apartment Buildings (2,163 units)

9. According to 1999 data from the Town of Gorham Tax Assessors Office, there are the following number and type of buildings in Gorham:

186 Commercial Businesses

3,401 Single Family

90 Condos

280 2-Family

26 3 Family

18 4 Family

25 Multi-Family

10. Northern would not use its existing distribution main near the Calpine plant to serve Calpine's electric generation load, but could use those mains to serve Calpine's non-generation load.
11. Interstate pipelines, such as PNGTS and M&N, are permitted to bypass local gas distribution companies and directly serve large gas customers, such as Calpine.

IN WITNESS WHEREOF, the Parties hereto, through their respective attorneys or other representatives who are fully authorized to do so on behalf of their principals, have caused this Stipulation to be executed effective as of the day and year first above written.

CMP Natural Gas, L.L.C.

Dated: _____ By: _____

Northern Utilities, Inc.

Dated: _____ By: _____

Maine Office of the Public Advocate

Dated: _____ By: _____